

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**FILED**

JUN 26 2009

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

EMMANUEL N. LAZARIDIS, individually, )  
and on behalf of )  
V. L., a minor, in his capacity as her legal custodian, )

LAZARIDIS - KORTSIADAKIS  
Smyrnis 14  
71305 Heraklion, Crete  
GREECE  
+30 693 902.7351

Plaintiffs, )

v. )

UNITED STATES DEPARTMENT OF JUSTICE, )  
by and through Eric Holder, Attorney General, )

1425 New York Avenue, N.W. )  
Washington, DC 20530 )

NATIONAL CENTER FOR MISSING )  
AND EXPLOITED CHILDREN, and )  
INTERNATIONAL CENTRE FOR MISSING )  
AND EXPLOITED CHILDREN, )

Registered Agent: )  
1090 Vermont Avenue, N.W. )  
Washington, DC 20005 )

Principle Offices: )  
Charles B. Wang International )  
Children's Building )  
699 Prince Street )  
Alexandria, Virginia 22314 )

Defendants. )

Case: 1:09-cv-01177  
Assigned To : Collyer, Rosemary M.  
Assign. Date : 6/26/2009  
Description: FOIA/Privacy Act

COMPLAINT FOR ORDER TO  
PRODUCE RECORDS AND  
PROVIDE TESTIMONY, AND  
FOR INJUNCTIVE AND  
DECLARATORY RELIEF

**RECEIVED**

JUN 17 2009

Clerk, U.S. District and  
Bankruptcy Courts



### **PARTIES**

2. The first plaintiff, Emmanuel N. Lazaridis, is an adult citizen of the Hellenic Republic (a/k/a Greece) and the United States, primarily domiciled in Heraklion, Crete, Greece where he lives with his first minor child since 2002.
3. The second plaintiff, V. L., is a minor, a citizen of the Hellenic Republic and the United States who lives openly and legally with her father in Heraklion, Crete, Greece.
4. Defendant United States Department of Justice ("DOJ") is a Department of the Executive Branch of the government of the United States. DOJ is an agency within the meaning of 5 U.S.C. § 552(f).
5. Defendant National Center for Missing and Exploited Children ("NCMEC") is a privately held entity incorporated in Washington, the District of Columbia, with registered office and principal place of business at the Charles B. Wang International Children's Building, 699 Prince Street, Alexandria, Virginia 22314. As the designated Central Authority for the United States under the Hague Convention on the Civil Aspects of International Child Abduction, and as the national resource center and information clearinghouse for children purported to be missing and exploited, it performed governmental functions pursuant to congressional mandates (42 U.S.C. §§ 5771, *et seq.*) during the time period relevant to the present action, under the direct supervision of the DOJ and the United States Department of State, wherefore it is an agency within the meaning of 5 U.S.C. § 552(f).

6. Defendant International Centre for Missing and Exploited Children (“ICMEC”) is a sister corporation of NCMEC which creates and operates subsidiaries, franchises and affiliates in foreign countries that purport to fight the sexual exploitation and abduction of children. It is a private corporation incorporated in Washington, the District of Columbia, with registered office at the principal place of business of the NCMEC, namely at the Charles B. Wang International Children's Building, 699 Prince Street, Alexandria, Virginia 22314. Because it is a corporate entity directly supervised by the NCMEC, an agency within the meaning of 5 U.S.C. § 552(f), the ICMEC is also an agency covered by the statute.

#### **JURISDICTION AND VENUE**

7. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §1331 (federal question), 28 U.S.C. §2201 (declaratory judgment), 28 U.S.C. §1367(a) (supplemental jurisdiction over related claims), 5 U.S.C. § 552(a)(4)(B) (FOIA) and 28 U.S.C. § 1782(a) (assistance to foreign tribunals).
8. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(b)(2) in that a substantial part of the events or omissions giving rise to the claims occurred in this judicial district, pursuant to 5 U.S.C. § 552(a)(4)(B) in that the defendants are located or incorporated in this judicial district and under its personal jurisdiction, and pursuant to 28 U.S.C. § 1782(a) in that the persons whose testimonies are requested or who possess the records whose production is to be compelled may be found in this district.

## STATEMENT OF FACTS

### *FOIA requests of 2005 to DOJ:*

9. On August 22, 2005 the first plaintiff submitted on behalf of himself and the second plaintiff three requests to DOJ for records pursuant to the Privacy Act 1974 and the FOIA (“the 2005 Requests”). Specifically the 2005 Requests were submitted to the following divisions of DOJ: the Executive Office for United States Attorneys (“AG”), the Federal Bureau of Investigation (“FBI”), and the United States National Central Bureau of INTERPOL (“DOJ-INTERPOL”).
10. The records sought in the aforesaid three requests were “written, audio, video or electronic records” under the control of DOJ about or concerning the first plaintiff, or about or concerning the second plaintiff, dating from 2002 to 2005.
11. The 2005 Requests were denied in full. An administrative appeal was lodged with respect to each decision to deny access, but in each case the administrative appeal was rejected towards the end of 2006. The following reasons were provided:
  - “... fugitives from justice, such as yourself, are not entitled to make FOIA requests or appeals if the requested records relate to the requestor's fugitive status...”
    - Denial of October 19, 2006 with respect to appeal no. 06-2464
  - “... the Department of Justice does not honor requests (or related appeals) for documents made by individuals who are currently fugitives from justice.”
    - Denial of November 2, 2006 with respect to appeal no. 06-1158, and also Denial of November 17, 2006 with respect to appeal no. 06-0750

***FOIA requests of 2008 to DOJ:***

12. On November 13, 2008 the first plaintiff submitted on behalf of himself and the second plaintiff four requests to DOJ for records pursuant to the Privacy Act 1974 and the FOIA. One of these requests was sent to DOJ-INTERPOL.
13. The records sought in the November 13, 2008 requests were “written, audio, video or electronic records” under the control of DOJ about or concerning the first plaintiff, or about or concerning the second plaintiff, dating from 2002 to 2008.
14. The request to DOJ-INTERPOL of November 13, 2008 on behalf of V. L. was denied. An administrative appeal was lodged with respect to this denial, but it was also denied for the following reason:

“... you are currently in violation of two state court judgments affirming your former wife as the primary custodial parent of your minor daughter. As such, you lack the capacity to make a Freedom of Information Act request for your daughter's records on her behalf...”

-- Denial of March 27, 2009 with respect to appeal no. 09-0927

***FOIA requests to NCMEC and ICMEC:***

15. On November 13, 2008 the first plaintiff also submitted on behalf of himself and the second plaintiff two requests to NCMEC and two requests to ICMEC for records pursuant to the Privacy Act 1974, the FOIA and Virginia Code § 2.2-3806.
16. The ICMEC denied the plaintiffs' requests stating as follows:

“... (ICMEC) is not a federal or state agency. ICMEC is a private, non-profit organization that is not subject to the Freedom of Information Act or the Privacy Act.”

-- Denial of December 12, 2008

17. The NCMEC similarly denied the plaintiffs' requests stating as follows:

“... (NCMEC) is not a federal or state agency. NCMEC is a private, non-profit organization that is not subject to the Freedom of Information Act or the Privacy Act.”

-- Denial of December 19, 2008

***The first plaintiff has never been a “fugitive from justice”:***

18. On September 5, 2002 V. L. was abducted from Europe by her mother, in collaboration with officials of the United States, and transported to the State of Michigan in violation of the laws of the United Kingdom and France.
19. On or about September 26, 2002 the Circuit Court of Ottawa County, Michigan committed the child's mother to psychiatric care and granted temporary guardianship of V. L. to her maternal grandparents.
20. At 11 A.M. on October 31, 2002 the said Letters of Guardianship expired.
21. On November 4, 2002 the first plaintiff was granted full “legal and physical custody” of the second plaintiff in an emergency court proceeding.
22. Immediately thereafter the second plaintiff was “voluntarily” returned to the first plaintiff by the Sheriff of Ottawa County himself, with her mother's full acquiescence.
23. “On November 4, 2002, an Ottawa County [Michigan] Court granted Emmanuel temporary custody of V. L. Emmanuel immediately left Michigan with V. L., eventually relocating in Greece.” *Lazaridis v. Wehmer*, Civ. No. 06-793-SLR, 2007 U.S. Dist. LEXIS 57733 (D. Del., Aug. 8, 2007) at \*\*1, vacated and remanded by *Lazaridis v. Wehmer*, 2008 U.S. App. LEXIS 17752 (3d Cir., Aug. 15, 2008).

24. The plaintiffs left Michigan on November 4, 2002 and have never returned to that State.
25. The plaintiffs left the United States on or about November 6, 2002.
26. It has never been contended that the plaintiffs' act of leaving the United States on or about November 6, 2002 and returning to their residences in Greece and the Dominican Republic was in violation of any state or federal law.
27. On or after December 1, 2002, the Ottawa County Circuit Court purportedly issued additional orders regarding V. L., but by that time father and child were already resettled outside the United States.
28. "In September 2003... the Ottawa County Court determined that it lacked jurisdiction over the child custody dispute..." *Lazaridis v. Wehmer*, Civ. No. 06-793-SLR, *supra*, at \*\*1.
29. The September 29, 2003 Opinion and Order of the Ottawa County Circuit Court specifically held that it had only exercised "temporary emergency jurisdiction" on November 4, 2002. *Lazaridis v. Lazaridis*, 02-44799-DC (MAF) (Mich. 20th Cir. Sept. 29, 2003). "A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse." *Mich. Comp. Law* § 722.1204(a) (section 204 of the UCCJEA).
30. Thereafter the Prosecutor of Ottawa County requested that a federal investigation commence, stating in his Memo of November 26, 2003: "Custody order claims Ottawa County does not have jurisdiction, therefore, no valid court order to proceed w/



kidnapping. Pursue kidnapping under Federal jurisdiction ~ statute is broader.”

31. On September 6, 2004, the divorce of the first plaintiff from his former spouse was pronounced by the Civil and Commercial Chamber of the Court of First Instance of the Dominican Republic, and full custody of V. L. was vested in the first plaintiff thereby.
32. On or about October 7, 2004 and despite the official November 26, 2003 Prosecutor's Memo, a Michigan warrant for the arrest of the first plaintiff was issued, based exclusively on the *ex parte* registration of a French child custody order in the Circuit Court of Ottawa County by V. L.'s mother, which French order purported to assign the residence of V. L. to the residence of her mother. *Lazaridis v. Wehmer*, Civ. No. 06-793-SLR, *supra*, at \*\*5 (“... the French Court orders which awarded custody of V. L. to his former wife... were the impetus of the felony arrest warrant...”).
33. In 2005 DOJ refused Michigan's request to bring charges against the first plaintiff for unlawful flight to avoid prosecution (18 U.S.C. § 1073) or under the federal international parental kidnapping statute (18 U.S.C. § 1204). Specifically, in late 2005 Assistant United States Attorney Margaret Chiara (“AUSA”) convened a grand jury in the Western District of Michigan, called witnesses, and gathered evidence to determine whether any crime was committed in the context of the removal or retention of V. L. abroad. This investigation did not result in any finding of probable violation of federal law, the grand jury refused to indict the first plaintiff, and AG thereafter declined to prosecute him:

“I will call you on Monday to talk in detail about these Blue and Yellow notices... However, please be advised that the case agent... called me last week to inquire as to the

procedure to cancel these notices. The AUSA declined prosecution on the case and she is going to close the investigation. She also told me that the mother of the child plans to travel to Greece to take matters into her own hands... The case agent said she would not be surprised if the mother shows up at the US Embassy or the FBI door when her plan fails... I looked into the case and it appears that the Greek authorities confronted the father in Greece and he provided some sort of legal documentation... that the authorities considered acceptable and therefore did not take custody of the daughter..."

-- May 6, 2006 internal FBI e-mail

34. After three years of insisting on his constitutional right to representation in the Ottawa County criminal case, on August 8, 2007 the first plaintiff was finally appointed a defence attorney: Thomas Smith of The Smith Law Firm.
35. Attorney Smith then obtained discovery materials from the Prosecutor of Ottawa County and discussed with him the prosecution's theory of the case, verifying that the first plaintiff was never accused of committing any crime prior to December 1, 2002:

"I am a Michigan licensed attorney practicing law in Holland, Michigan (Ottawa County). I was appointed by the 58th District Court in Holland, Michigan in August 2007 to represent the defendant in the above captioned case [People v. Emmanuel N. Lazaridis]. I have received and reviewed many documents provided by the Ottawa County Prosecutor's Office. I have attended several negotiation meetings with the prosecutor assigned to the case. The prosecutor's legal theory of prosecution, as best I understand what has been presented to me up to this point in time, does not allege that defendant committed the charged crime (kidnapping-custodial interference, MCL 750.35a(1)) before December 1, 2002. In fact, the legal complaint in this case lists the date of offense as on or about "01/06/2003." The prosecutor has told me that, although he can and may change the date of offense on the complaint, he is unaware of any evidence showing that defendant committed the charged crime before December 1, 2002 – and thus he does not intend to change the date of offense on the complaint to any date before December 1, 2002."

-- May 6, 2008 Statement of Attorney Thomas Smith

36. On June 18, 2008 the Single-Member Penal Court of Heraklion, Crete exonerated the first plaintiff of the charge of kidnapping or custodial interference with respect to the removal

of his child from the United States to Greece in 2002:

“Sitting in judgment adversarially against the accused, Emmanuel Lazaridis, son of Anastasios, it pronounces him innocent of the act alleged to him, the violation of paragraph and article 324 § 1 of the Code of Penal Procedure, which took place in the State of Michigan, U.S.A. in December of 2002.”

-- Excerpt of Order No. 7105/08 (in translation):

Article 324 § 1 of the Code of Penal Procedure of the Hellenic Republic states as follows:

“One who abducts a minor from his parents, guardians or any person with legal right to his care, or one who aids the voluntary escape of a minor from the authority of such persons shall be punished by imprisonment for not more than three years.”

-- INTERPOL translation from the Greek Code of Penal Procedure available at <http://www.interpol.int/public/Children/Missing/NationalLaws/mcGreece.asp>

37. The mother of V. L. was subsequently convicted of multiple counts of criminal libel on June 26, 2008 and January 19, 2009, and she is scheduled to be tried for other crimes against the plaintiffs on November 2 and 19, 2009.

***The first plaintiff is the second plaintiff's sole legal custodian:***

38. “In September 2003... the Ottawa County Court determined that it lacked jurisdiction over the child custody dispute...” *Lazaridis v. Wehmer*, Civ. No. 06-793-SLR, *supra*, at \*\*1.
39. The September 29, 2003 Opinion and Order of the Ottawa County Circuit Court specifically held that it had only exercised “temporary emergency jurisdiction” on November 4, 2002. *Lazaridis v. Lazaridis*, 02-44799-DC (MAF) (Mich. 20th Cir. Sept. 29, 2003). “A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with

mistreatment or abuse.” *Mich. Comp. Law* § 722.1204(a) (section 204 of the UCCJEA).

40. No State of the United States has any subject-matter jurisdiction over the matter of custody and care of V. L., nor has any State obtained or exercised personal jurisdiction over the plaintiffs at any time after November 4, 2002.
41. On September 6, 2004, the divorce of the first plaintiff from his former spouse was pronounced by the Civil and Commercial Chamber of the Court of First Instance of the Dominican Republic, and full custody of V. L. was vested in the first plaintiff thereby.
42. “Lazaridis also apparently filed for divorce in the Dominican Republic. On May 16, 2005, a Greek court recognized the Dominican divorce order.” *Lazaridis v. Wehmer*, Civ. No. 06-793-SLR, *supra*, at \*\*2.
43. By order dated December 16, 2005 the Family Court of the State of Delaware, at the request of V. L.'s mother, accepted the Dominican divorce and its Greek registration as having effected her divorce from the first plaintiff.
44. Because the French divorce case that commenced on December 3, 2002 is still ongoing in direct violation of the jurisdictional requirements of European law and specifically of European Council Regulation No. 1347/2000, the marriage between the first plaintiff and the mother of V. L. has not been dissolved in France. On February 26, 2009 Lyon Attorney Francoise Breuillé wrote: “... it is not legal to get married while you are not divorced and... regarding french law, your divorce will be pronounced by the Court of Appeal in Lyons in its future decision.”

45. On November 8, 2008 the mother of V. L. married Brian Keith Golm in Allegan County, Michigan, in apparent reliance on the Dominican child custody and divorce order.
46. Greek child custody orders of January 31 and April 27, 2007 and February 27, 2008 renewed sole custody of V. L. in the first plaintiff, forbade the child's removal from Heraklion, and fixed a visitation schedule for the American mother.
47. On July 30, 2007 the Family Court of Delaware concluded that “the January 31, 2007 Order... is an initial decree by a court that appears to have jurisdiction”. A court having jurisdiction to issue an “initial decree” under Delaware law is one that satisfies the criteria of 13 *Del. C.* § 1920 (section 201 of the UCCJEA).
48. The January 31, 2007 Greek child custody order is in effect throughout Europe pursuant to European Council Regulation No. 2201/2003.
49. Following visitation at the mother's house in Heraklion according to the terms of the Greek visitation order, the Heraklion court found that the mother had “employed physical violence” against, “threatened” and “frightened” the second plaintiff.
50. The Greek Prosecutorial Service subsequently brought at least eight (8) charges against the mother of V. L. and three (3) charges against persons and organizations that have been raising money to fund a *de novo* abduction attempt of V. L. from Greece.
51. The mother of V. L. was arrested in Heraklion, and arraigned on February 4, 2008.
52. On May 19, 2009 the Greek Authority for the Protection of Personal Data, an independent tribunal under Greek law, ruled as follows (in translation):

“Emmanuel Lazaridis, as a personal data subject... has the right to access pursuant to article 12 of law no. 2472/1997 to personal data that concern him directly and personally. In addition, Emmanuel Lazaridis assumes the role of a data subject also with respect to personal data that concern his eight year old daughter, since by order of the Single-Member First Instance Court of Heraklion he has her custody and care...”

-- Excerpt of APDPH Decision no. G/EX/3147/19-05-2009

***The NCMEC and ICMEC exploit and endanger children who are legally living outside the United States, whose whereabouts are known to the authorities, pretending that these children are missing and falsely accusing their legal custodians of criminal activity:***

53. The activities of the NCMEC are substantially those of a government agency, and have a statutory basis:

“President Ronald Reagan signed the Missing Children's Assistance Act into law in 1984. *This legislation established a national clearinghouse of information regarding missing and exploited children. Congress designated the nonprofit organization NCMEC to act as that resource.* NCMEC works in cooperation with the U.S. Department of Justice's (DOJ's) Office of Juvenile Justice and Delinquency Prevention. The organization has access to the National Crime Information Center (NCIC) and the National Law Enforcement Telecommunications System (NLETS). It also operates a national network, which links to law enforcement through 50 state clearinghouses.”

-- Liz Martinez, The Best Kept Secret in Law Enforcement: A look at the National Center for Missing and Exploited Children, *Law Enforcement Technology*, May 2007

54. In performing its activities, NCMEC staff are (or were at times relevant to the present action: 2002 to the present) directly supervised by a government agency:

“On January 29, 1998, OJJDP, the U.S. Department of State's Office of Children's Issues, and the National Center for Missing and Exploited Children (NCMEC) entered into *an interagency agreement* on international child abduction... The agreement enables NCMEC to provide services to assist the U.S. Central Authority (State Department) in carrying out this Nation's responsibilities under the Hague Convention on the Civil Aspects of International Child Abduction. (In each country, the agency responsible for international child abductions under the Hague Convention is referred to as the Central Authority.) NCMEC assists in locating and recovering children illegally removed from their families and brought to the United States... NCMEC... receives and

reviews all potential cases and corresponds with other Central Authorities to update information on incoming cases... Other NCMEC services include legal technical assistance, ... poster creation and dissemination, international contacts, law enforcement liaison, age progression and reconstruction technology, and administrative support in making the arrangements necessary to secure the safe return of the child. *OJJDP oversees and funds NCMEC's international child abduction activities.*"

-- Juvenile Justice Journal, vol. V, no. 1, May 1998 (emphasis added)

55. The NCMEC directly supervises the activities of the ICMEC.
56. Defendants NCMEC and ICMEC together advertise or circulate the cases of children alleged to be missing, in posters and over the internet through web sites such as <http://www.ncmec.org>, <http://www.missingkids.com>, and <http://www.icmec.org> . Often attached to the posters of such children are the pictures and personal data of adults who are alleged by these organizations to be their abductors.
57. The second plaintiff, V. L., has never been missing from anyone or anywhere, and she is certainly not missing today, yet defendants NCMEC and ICMEC continue to claim that she is missing and distribute her personal data over the internet, intentionally endangering her while they profit from their exploitation of her personal data. The fraudulent publications may be viewed at <http://tinyurl.com/luw2x7> and <http://tinyurl.com/mbdta7> .
58. On June 8, 2006 the Ministry of Justice of the Hellenic Republic rejected the mother's request for return of the minor child (Decision no. 45592).
59. Defendants NCMEC and ICMEC have always known that their posters concerning the plaintiffs are false.
60. Defendants NCMEC and ICMEC are aware that the mother of V. L. is mentally ill.

61. Defendants NCMEC and ICMEC know exactly where V. L. is located.
62. In addition to the second plaintiff, defendants NCMEC and ICMEC are falsely advertising other children to be missing, thereby intentionally defrauding their donors and deceiving the general public. Some cases of missing child fraud promulgated by defendants NCMEC and ICMEC or other agencies have been compiled by the National Center for Missing in Europe Children and are described at <http://www.ncmec.eu>.
63. The fraud perpetrated or perpetuated by defendants NCMEC and ICMEC is self-serving in that it results in higher levels of governmental funding and private donations for the said defendants.

**FIRST CAUSE OF ACTION**  
**(The 2005 Requests Were Wrongfully Denied by DOJ)**

64. Paragraphs 1 to 63 are realleged and incorporated herein by reference.
65. The law of this circuit is clear: a person who has not been arraigned on criminal charges and is physically located outside the United States cannot be a fugitive from justice at common law unless he was present in the jurisdiction of the state that accuses him of committing a crime at the time of crime alleged. *Richards v. Matthews*, 207 F.2d 227, 241 (D.C. Cir. 1953) (“... the accused must not only be validly charged with a crime against a state, he must be a fugitive from that state, he must have fled from it; the expression used in many cases is that he must have left the state after committing the crime, or after it was alleged to have been committed.”); *Moncrief v. Anderson*, 119 U.S. App. D.C. 323, 342



F.2d 902, 904 (D.C. Cir. 1964) ("Fugitivity means presence in the demanding state when the crime was allegedly committed."). As Justice Holmes observed almost a century ago, although "acts done outside a jurisdiction, but intended to produce and producing detrimental effects within it, justify a state in punishing the cause of the harm as if [the foreign actor] had been present at the effect, ... it does not follow that [such a person] is a fugitive from justice." *Strassheim v. Daily*, 221 U.S. 280, 285 (1911). See also *Collazos v. United States*, 368 F.3d 190, 202, 203 (2d Cir. 2004); *United States v. Schreiber*, 535 F. Supp. 1359, 1363 (S.D.N.Y. 1982); *United States v. All Funds on Deposit in Any Accounts Maintained at Merrill Lynch, Pierce, Fenner & Smith*, 801 F. Supp. 984, 998 (E.D.N.Y. 1992); *In re Grand Jury Subpoenas*, 179 F. Supp. 2d 270, (S.D.N.Y. 2001); *Mitchell v. Obenski*, 134 Fed. Appx. 548, 2005 U.S. App. LEXIS 11292 (3d Cir. Pa. 2005).

66. Defendant DOJ wrongfully withheld the agency records covered by the 2005 Requests because the first plaintiff was never a fugitive from justice, since was not present in Michigan at the time of the crime alleged.
67. Although the case of *Lazaridis v. The Herald Co.*, Case No. 5:05-CV-111, 2006 U.S. Dist. LEXIS 5627 (W.D. Mich., January 26, 2006) was dismissed by application of the fugitive disentitlement doctrine, the question of whether the first plaintiff was at that time a common-law fugitive under the *Strassheim* rule was not addressed to the court. It must be recalled that the first plaintiff's constitutional right to counsel under the Sixth Amendment was only recognized by the District Court of Ottawa County on August 8, 2007, after

*Lazaridis v. The Herald Co.* had already been decided. The first plaintiff is now able to demonstrate that he has never been accused of having committed a crime on the one day that he was actually in the State of Michigan, namely, on November 4, 2002. Thus the case of *Lazaridis v. The Herald Co.* was wrongly decided. In *Lazaridis v. Wehmer*, 288 Fed. Appx. 800, 2008 U.S. App. LEXIS 17752 (3d Cir., August 1, 2008) the Court of Appeals for the Third Circuit recently declined to rule on whether or not the first plaintiff was ever a fugitive, but it also refused to apply the doctrine of fugitive disentitlement.

68. Defendant DOJ wrongfully withheld the agency records covered by the 2005 Requests because it knew on or before May 6, 2006 that the first plaintiff was not a possible subject of criminal prosecution, and that no criminal prosecution would be compromised by its compliance with the plaintiffs' FOIA requests.
69. In fact DOJ knows that there was never any probable cause to support a complaint against the first plaintiff, and that the first plaintiff is innocent of any crime.
70. Only a putative criminal may become a fugitive. A person who has been conclusively determined to be innocent of a charge cannot become a fugitive because of it.
71. Defendant DOJ wrongfully withheld the agency records covered by the 2005 Requests specifically to cover up the liability of its agents under the principle of *Bivens*, and especially the intentional and tortuous conduct of FBI case agent for Western Michigan, Roberta Gilligan, who violated the fundamental constitutional rights of the plaintiffs by seizing or caused to be seized personal records relating to the plaintiffs without court-

approved warrants and using the FBI's expanded and unchecked surveillance powers under the USA Patriot Act.

72. Defendant DOJ wrongfully withheld the agency records covered by the 2005 Requests because it knew that the release of those records would demonstrate that a felony charge was brought and maintained in bad faith against the first plaintiff in Ottawa County. The federal investigation uncovered exculpatory evidence and found no probable cause. All agency records related to that investigation should have been provided to the first plaintiff because he is entitled under the Fifth and Fourteenth Amendments to obtain evidence if it is favorable to him and material to guilt or punishment. *Brady v. Maryland*, 373 US 83 (1963). Under *Brady*, “material” means exculpatory evidence that would raise a doubt about the defendant's guilt. *U.S. v. Agurs*, 427 US 97 (1976). “Material” evidence also includes evidence that tends to impeach the credibility of a key government witness. *U.S. v. Bagley*, 473 US 667 (1985). In the present case, DOJ wrongfully refused to provide to the first plaintiff the exculpatory evidence needed before the Michigan court.
73. The failure of the DOJ to provide the records covered by the 2005 Requests has resulted in the unnecessary and long-term denial of the plaintiffs' constitutional rights, and has caused them direct economic and psychological harm.

**SECOND CAUSE OF ACTION**  
**(The Request to DOJ-INTERPOL of November 13, 2008**  
**On Behalf of V. L. Was Wrongfully Denied by DOJ)**

- 74. Paragraphs 1 to 63 are realleged and incorporated herein by reference.
- 75. Defendant DOJ wrongfully withheld the agency records covered by the request to DOJ-INTERPOL of November 13, 2008 on behalf of the second plaintiff because the first plaintiff is in fact her sole legal custodian.
- 76. Without subject matter or personal jurisdiction over the plaintiffs, no State court of the United States may purport to alter the vested parental interests of the first plaintiff.
- 77. The failure of the DOJ to provide the records covered by the request to DOJ- INTERPOL of November 13, 2008 on behalf of the second plaintiff has resulted in the unnecessary and long-term denial of the plaintiffs' constitutional rights, physical and psychological harm to the second plaintiff, and direct economic damage to both plaintiffs.

**THIRD CAUSE OF ACTION**  
**(The Requests to NCMEC and ICMEC Were Wrongfully Denied)**

- 78. Paragraphs 1 to 63 are realleged and incorporated herein by reference.
- 79. Because the records requested from defendants NCMEC and ICMEC were generated or obtained under activities supervised by one or more federal agencies under Congressional mandate, and because defendant NCMEC performs a government function in this regard, those records are obtainable under the FOIA despite the fact that neither of defendants NCMEC or ICMEC is itself a governmental agency.

80. Because the activities of defendant ICMEC are supervised, controlled or directed by defendant NCMEC, the records of defendant ICMEC are also captured by the FOIA.
81. Through its Greek affiliate, The Smile of the Child, the NCMEC claims to be protected from suit in Greece because it is performing a law enforcement function:

“The organization communicated directly with the NCMEC, which explained that, when there exist unresolved penal cases, the judgment as to choice of uploaded pictures on the specific web page belongs to the law enforcement authorities of the United States... Moreover, not even the Prosecutor of Heraklion or any other authority would be able to direct the removal of the photograph of your child from the web page of this foreign Center, given that the Greek authorities do not have the needed authority to judge the acts of foreign law enforcement authorities.”

-- Decision no. 12208/26.07.2007.3 of the Hellenic Ombudsman

82. The failure of defendants NCMEC and ICMEC to provide the records covered by the FOIA requests of the plaintiffs is part of a cover-up of tortuous and illegal activities.

**FOURTH CAUSE OF ACTION**  
**(Application For Discovery From NCMEC and ICMEC)**

83. Paragraphs 1 to 63, 72 and 81 are realleged and incorporated herein by reference.
84. All records obtained by defendants NCMEC and ICMEC, whether or not obtained in the exercise of a governmental or law enforcement function, should as a matter of public policy be accessible to the persons who are the subjects of those records.
85. To the degree that a record controlled by defendants NCMEC or ICMEC is not captured by the FOIA, that record should be discoverable pursuant to the Federal Rules.
86. The question of whether the torts of libel or defamation have been committed against the first plaintiff by the Grand Rapids Press, the Associated Press or other media outlets, is

pending before the Greek courts.

87. The tort cases being brought by the first plaintiff in Greece are within Greek jurisdiction pursuant to Art. 5(3) of EC Reg. No. 44/2001 (“Brussels I Regulation”) and the principles of European law expounded by the European Court of Justice in the cases of *Shevill v. Presse Alliance SA*, Case C-68/93 (ECJ, 1995), *Erich Gasser GmbH v. MISAT Srl*, Case C-116/02 (ECJ, Dec. 9 2003) and *Owusu v. Jackson*, Case C-281/02 (ECJ, Mar. 1 2005) (*i.e.*, in cases of injury to reputation, the courts of the Member State within which the reputation is injured are competent under the Brussels I Regulation, and the doctrine of forum *non-conveniens* cannot be applied to such cases).
88. The Greek tort cases are also based on Art. 5(4) of the Brussels I Regulation whereby jurisdiction over a civil claim for damages based on an act giving rise to criminal proceedings is invested in the court seized of those proceedings. In the present case it has been demonstrated through criminal proceedings against the mother of V. L., who has been convicted of criminal libel twice over and sentenced to 19 months imprisonment, that certain articles published by the Grand Rapids Press, the Associated Press or other media outlets were defamatory and libelous with respect to the first plaintiff.
89. Defendants NCMEC and ICMEC are not subject to suit in Greece so long as they claim to the protection of acting with law enforcement authority. Consequently, discovery from them as non-parties to the libel lawsuits against the media defendants is not available from the Greek courts.

90. Were the records of defendants NCMEC or ICMEC physically located in Greece, they would be discoverable pursuant to law no. 2472/1997 (implementing European Directive 95/46/EC) as records concerning the plaintiffs personally.
91. The records of defendants NCMEC and ICMEC are not within the territorial authority of the Greek courts, nor are their servants subject to deposition in Greece.
92. It is permissible to employ the records of defendants NCMEC and ICMEC as evidence in proceedings before the Greek courts, subsequent to official Greek translation, and depositions made abroad are also admissible in such civil proceedings.
93. The records of defendants NCMEC and ICMEC and the depositions of key employees are necessary for the Greek tort cases in order to establish the nature and extent of the liability of the Greek defendants, in order to demonstrate that the information relied upon by the Greek defendants was provided and relied upon in bad faith, and in order to enable the Greek courts to structure an appropriate relief for the plaintiffs.
94. Moreover the first plaintiff is entitled under the Fifth and Fourteenth Amendments to obtain evidence that is material to the matter of the Ottawa County charge, and discovery should be ordered to give effect to the first plaintiff's clear constitutional right.

**WHEREFORE**, the plaintiffs pray judgment against the defendants, and each of them, as it applies to each of the stated Causes of Action, and respectfully request that the Court

- (a) grant comity to the June 18, 2008 Order No. 7105/08 of the Single-Member Penal Court

of Heraklion, Crete, Greece, and thereby declare that the first plaintiff has been found innocent of kidnapping V. L. from the United States or retaining V. L. outside the United States between November 2002 and May 2006;

- (b) declare that the first plaintiff has never been a fugitive from justice from the United States or from the State of Michigan, according to the binding precedent of this Circuit;
- (c) order defendant DOJ to provide to the plaintiffs all materials in the defendant's control that may be covered by the 2005 FOIA Requests, regardless of the location or possessor of those materials;
- (d) grant comity to the January 31 and April 27, 2007 Greek child custody orders, and thereby declare that the first plaintiff is the sole custodian of V. L.;
- (e) order defendant DOJ to provide to the plaintiffs all materials in the defendant's control that may be covered by the request to DOJ- INTERPOL of November 13, 2008 on behalf of the second plaintiff;
- (f) order defendants NCMEC and ICMEC to provide to the plaintiffs all materials in their control that may be covered by the FOIA requests to the said defendants;
- (g) order defendants NCMEC and ICMEC to provide all discoverable materials for use in the aforesaid civil proceedings abroad, and to provide for the deposition of such of their employees, former employees and servants as may be needed to provide testimony for use in the aforesaid civil proceedings abroad, according to the Discovery Schedule that



will be provided at trial;

- (h) enjoin defendants NCMEC and ICMEC from continuing to collect, publish or distribute any materials concerning the plaintiffs in any form whatsoever;
- (i) grant the costs of suit herein incurred; and
- (j) grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,



Dated: 10 - June - 2009

Emmanuel N. Lazaridis

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